No. 11,626.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

LILY HO QUON and ALBERT T. QUON,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Upon Petition to Review Decisions of the Tax Court of the United States

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PETITION OF LILY HO QUON AND ALBERT T. QUON FOR REHEARING.

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To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Come now petitioners in the above entitled matter and apply to the Court for a rehearing in order that there may be considered the applicability to this case of *Oyama v. State of California,* decided by the Supreme Court of the United States January 19, 1948, reversing the Supreme Court of California.

The *Oyama* case involved a gift by a resident alien ineligible to citizenship, to his minor son, a citizen. The gift was made by a purchase of land in the son's name, the father then having himself appointed guardian. Under the law of California the father could not own real estate, but the son could. The State charged that the real pur-

chaser and owner was the father, not the son, and that the purchase in the son's name was a mere technical shifting of title to avoid the California Alien Land Law. (C. C. H., U. S. Supreme Court Bulletin #44, p. 409.) But the Supreme Court of the United States reversed, saying that in the circumstances "the burden of proving that there was in fact no completed *bona fide* gift falls to him who would attack its validity." (*Supra,* p. 411.) With respect to the guardianship the Court observed that as guardian the father was subject to the law of trusts, citing Section 1400 of the California Probate Code. (*Supra,* p. 413, footnote 24.)

Here the facts are in substance the same. Petitioner Albert T. Quon was a resident of the United States but of Chinese ancestry, and therefore in 1941, the year here involved, ineligible to citizenship. (*Supra,* p. 405, footnote 3.) Solely because of his ancestry, and for no other reason, the business upon which his wife and four minor children, all citizens of this country, depended for their security, was threatened with destruction by the program established under executive order of freezing the assets of enemy aliens and aliens whose countries had been or were being subjected to enemy control. As a result of these impelling circumstances Albert T. Quon made the transfers involved here to his citizen wife and children. The *Oyama* case shows that from such circumstances no presumption of want of *bona fides* in the transfers can be drawn. That case shows therefore as complete *non sequiturs* the Tax Court's reasoning in its opinion here that the "desire to avoid the freezing of assets in fact indicates that the arrangement was intended merely as a *technical* shifting of title from alien to citizen" and that the "*purported* limited partners in a sense constituted *mere*

depositories of title for purposes other than those connoting a true partnership." (Italics supplied.)

If this Court believes that any of the facts cited above are not clearly shown in the Tax Court's findings, petitioners request a remand for that purpose. The *Oyama* decision of the Supreme Court of the United States was, of course, not available when the case here was argued before the Court below, or before this Court.

Wherefore, petitioners respectfully request that the Court grant this application for rehearing.

Respectfully submitted,

GEORGE T. ALTMAN,
Attorney for Petitioners.

Certificate of Counsel.

I hereby certify that in my judgment the foregoing petition for rehearing is well founded and that it is not interposed for delay.

GEORGE T. ALTMAN,
Attorney for Petitioners.

Dated: Los Angeles, California, January 28, 1948.